

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA (RICHMOND)

In re) Case No. 14-31848-KRH
JAMES RIVER COAL COMPANY,) Richmond, Virginia
et al.,)
Debtors.) May 7, 2014
1:04 PM

TRANSCRIPT OF HEARING
OMNIBUS HEARING DATE
BEFORE THE HONORABLE KEVIN R. HUENNEKENS,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 THE COURT OFFICER: All rise. Court is now in
2 session. Please be seated and come to order.

3 THE CLERK: James River Coal Company, items 1 through
4 16 on proposed amended agenda.

5 THE COURT: Good afternoon.

6 MR. RESNICK: Good afternoon, Your Honor. For the
7 record, Brian Resnick of Davis Polk & Wardwell, again, for
8 James River Coal Company and its thirty-three debtor
9 subsidiaries. I'm joined here by my colleague, Michelle
10 McGreal.

11 THE COURT: You may proceed.

12 MR. RESNICK: Thank you, Your Honor.

13 So as we notified chambers yesterday, I'm pleased to
14 report that we have a completely uncontested hearing today.
15 We were able to resolve all of the objections that were filed
16 to the bid procedures and to the -- and to the DIP, which was
17 actually a remarkable achievement over the last few days. And
18 I definitely want to thank the committee professionals and the
19 DIP lenders and their professionals as well, and the committee
20 members, because we've worked very hard over the last few days
21 to resolve the committee's objections to the DIP, in
22 particular.

23 THE COURT: That's excellent.

24 MR. RESNICK: Thank you. And just by way of a bit of
25 an update, as Your Honor knows, since the last time we were

1 here before you, the committee was appointed, and we have been
2 working closely with them, as we move forward with our
3 strategic transaction process, and we're also here to seek
4 approval today of the strategic transaction bidding
5 procedures, which I'll get to later in the hearing.

6 But the process is well underway, and the debtors'
7 proposed financial advisors and bankers are well under the way
8 in communicating with potential bidders; and the process is
9 ongoing.

10 THE COURT: All right.

11 MR. RESNICK: So unless Your Honor disagrees, I'd
12 propose just to walk you through the agenda in the order in
13 which it appears.

14 THE COURT: That would be my preference.

15 MR. RESNICK: Great, thank you, Your Honor.

16 So first up we have a few first-day orders that we
17 are requesting now become final orders. They were interim
18 last time, and now we're requesting they become final. The
19 wages motion and the shippers, warehousemen and service
20 providers motion, there are no substantive changes to that.
21 The only changes were just conforming changes to bring it from
22 interim to final.

23 And I don't think there's anything of note to mention
24 in those motions. So unless Your Honor has any questions,
25 we'd request that it be entered.

1 THE COURT: Those will be entered on a final basis --
2 I'm sorry, did you wish to be heard?

3 MR. RESNICK: I'm sorry, I apologize. On the -- with
4 respect to the wages motion, we did agree with the committee
5 to come to court for further approval if we want to make any
6 severance payments above a certain cap. And I did agree to
7 say that on the record. I apologize that I forgot that.

8 This is with respect to severance payments in the
9 wages motion.

10 THE COURT: All right. Very good. Did the committee
11 wish to be heard on that point, or is that satisfactory?

12 MS. FREEMAN: That's satisfactory. Thank you, Your
13 Honor.

14 THE COURT: Okay, very good. Thank you for that
15 clarification.

16 MR. RESNICK: Yes, thank you.

17 THE COURT: All right. So that will be, then, in the
18 order that I will be entering on a final basis?

19 MR. RESNICK: It's not actually -- it's just a
20 separate thing we've agreed --

21 THE COURT: Just an agreement?

22 MR. RESNICK: -- yeah.

23 THE COURT: All right. Very good.

24 MR. RESNICK: Thank you.

25 Next up is the surety bond program motion. This is

1 also an interim order that we are seeking approval on a final
2 basis. There were no objections filed, and one of the
3 debtors' sureties, Lexon, in fact, filed a statement of
4 support.

5 Certain of the debtors' sureties did contact us with
6 a few concerns, and we agreed to include language in the order
7 that resolved their concerns. And we've also filed a revised
8 surety bond schedule reflecting one correction.

9 THE COURT: All right. Does any party wish to be
10 heard in connection with the debtors' motion for entry of a
11 final order authorizing the continuation of the surety bond
12 program?

13 MR. WESTERMANN: Your Honor, just very briefly.
14 Robbie Westermann on behalf of Bond Safeguard and Lexon
15 Insurance Company. Your Honor, we worked with the debtors on
16 the language in the final order, particularly in respect to
17 relief from stay in the event of unpaid premiums.

18 We've worked out language into section 9 of the final
19 order, so with that language, we support entry of the final
20 order.

21 THE COURT: All right. Thank you very much, Mr.
22 Westermann.

23 Does any other party wish to be heard?

24 All right. That will be then, with that change,
25 approved on a final basis.

1 MR. RESNICK: Thank you, Your Honor.

2 Next we have the taxes motion and the NOL motion,
3 both interim orders that we're now seeking final relief on.
4 We haven't made any substantive changes to the taxes motion.
5 On the NOL motion we added some additional notice and
6 consultation rights for the DIP agent and the committee, and
7 have clarified some of the other notice provisions.

8 We've not received any objections to either of these
9 orders, and we'd request that the Court enter them on a final
10 basis.

11 THE COURT: All right. Does any party wish to be
12 heard in connection with either of those motions?

13 All right, those will be entered on a final basis.

14 MR. RESNICK: Thank you, Your Honor.

15 The last interim order that we're now seeking final
16 approval of is the DIP facility. As Your Honor is aware, on
17 April 9th of this year, following the first-day hearing, the
18 Court approved the interim DIP order, authorizing the debtors
19 to borrow up to eighty million dollars. The debtors are now
20 seeking entry of the final order authorizing the remaining
21 borrowings of up to 110 million dollars.

22 Limited objections were filed by three lessors, and
23 all of those were promptly resolved by the debtors' agreement
24 to make certain revisions to the final order. Moreover, one
25 of the debtors' sureties, Lexon as well, filed a statement in

1 support of the motion.

2 And with respect to the committee, we -- as I
3 mentioned earlier, we worked with them and the DIP lenders in
4 an attempt to resolve their objection. And I'm pleased to
5 report that we were able to resolve it so that they are not
6 objecting to the DIP. We resolved it by agreeing to make
7 certain changes to the credit agreement that appear at the end
8 of the order in particular, those changes.

9 One of them is to reduce the amount of the pre-
10 payment penalty, pre-payment premium on amortization payments,
11 which is a savings to the debtors of 150,000 dollars. And the
12 other is to get some flexibility on the July 15th milestone
13 for delivering to the agent binding bids, sufficient to repay
14 the DIP facility.

15 There are some other changes in the order as well.
16 As Your Honor may have noticed, we will not be fighting today
17 over the lenders getting a lien or a claim on avoidance action
18 proceeds. The lenders have --

19 THE COURT: I'm shocked.

20 MR. RESNICK: Although the lenders have agreed as
21 part of their concessions to resolve the committee's objection
22 to not take a lien on or claim against the avoidance action
23 proceeds.

24 THE COURT: All right. So -- I won't say that.

25 Okay, very good.

1 MR. RESNICK: All right. There are other changes in
2 the order as well. We've increased the investigation cap from
3 25,000 to 50,000. We've increased the challenge period from
4 thirty days to sixty days. We've removed the waiver of the
5 equity of the case exception under 552(b), clarified that if
6 Your Honor were to rule in favor of the plaintiffs on a
7 challenge to the pre-petition lenders' liens or claims, that
8 you would have the authority to unwind the refinancing. We
9 clarified that.

10 I should also mention -- by the way, I thanked the
11 committee and the DIP lenders, but our pre-petition lenders
12 have also been helpful and instrumental in the process. And a
13 few of these things that I've just mentioned have been
14 concessions from them as well.

15 THE COURT: Very good. Does any party wish to be
16 heard in connection with the debtors' motion for entry of a
17 final order authorizing the DIP facility?

18 MR. STAMER: Good afternoon, Your Honor.

19 THE COURT: Good afternoon.

20 MR. STAMER: For the record, Michael Stamer from Akin
21 Gump Strauss Hauer & Feld. I'm here with my colleague Alexis
22 Freeman, also from our firm, and Jon Gold from LeClairRyan.

23 THE COURT: Good to see you again.

24 MR. STAMER: Thank you; likewise, Your Honor.

25 Your Honor, I'm happy to report I'll be brief. I

1 think the debtor did a nice and accurate job describing how we
2 got here. The parties did, in fact, work hard to make this a
3 fully consensual second-day hearing. We had to all work even
4 harder to make the DIP a consensual hearing. But that's
5 exactly what happened. There was some give-and-take, both
6 from the pre-petition lenders and from the DIP lenders.

7 Your Honor, this is not a perfect DIP. We'll be the
8 first ones to acknowledge that. But there's not a -- there
9 really wasn't any alternative. And what this company really
10 needs is liquidity and stability to get on with the next
11 chapter, which is pursuing a sale-investment process to
12 maximize value for all stakeholders.

13 So it's for that reason and for the concessions that
14 the debtor accurately described, that the committee has, in
15 fact, withdrawn its objection.

16 THE COURT: Very good. We haven't seen many DIPs
17 since 2008, so it's good to see them coming back.

18 MR. STAMER: That the market is back open. Yes, Your
19 Honor.

20 THE COURT: All right, very good.

21 MR. STAMER: Thank you.

22 THE COURT: Thank you.

23 MS. EATON: Good afternoon, Your Honor. For the
24 record, Alice Eaton, with Paul, Weiss, Rifkind, Wharton &
25 Garrison, on behalf of Cantor Fitzgerald Securities, the DIP

1 agent. Thank you, Your Honor, for your time this afternoon.
2 And I find myself in the very odd position with actually
3 agreeing with Mr. Stamer. We wanted to --

4 THE COURT: I was trying to think if I ever did that.

5 MS. EATON: He's going to mark this day on his
6 calendar because it's never probably going to happen again,
7 just like we may never find a case where we have a consensual
8 agreement to give up a lien on avoidance action proceeds.

9 But in any event, I wanted to thank the other parties
10 for their efforts. And we really think that the consensual
11 order allows the company to focus on its sale process, which
12 is absolutely critical at this point, without any distractions
13 from a contested hearing.

14 And so unless you have any questions of me, we
15 respectfully request that you enter the order.

16 THE COURT: No, but I -- I echo the comments that
17 were made earlier. It's obvious that the parties all made
18 concessions at every level and worked very hard to get to
19 where we are. And I'm glad we're focused on the right thing,
20 which is to proceed to the next step, because that's the
21 critical one in this case.

22 MS. EATON: Thank you, Your Honor.

23 THE COURT: And so I applaud your work.

24 MS. EATON: Thank you. We agree wholeheartedly.

25 THE COURT: All right.

1 MS. EATON: Thank you.

2 MS. MCLEMORE: Good afternoon, Your Honor. Jen
3 McLemore here on behalf of Kentucky River Properties, LLC and
4 Timberlands, LLC. We filed a limited objection. I just want
5 to make sure that the record is clear that the debtors did
6 agree to add language in paragraph 18(c) and paragraph 26 for
7 us, to acknowledge that pre-petition liens that were perfected
8 by memorandum of lease and other methods are being recognized
9 here, and they're not being -- they're not being made junior
10 to the DIP, provided they were done properly. So --

11 THE COURT: Very good.

12 MS. MCLEMORE: -- and I wanted to thank everybody as
13 well for working with us.

14 THE COURT: Very good.

15 MS. MCLEMORE: It was a lot of work, so --

16 THE COURT: All right.

17 MS. MCLEMORE: Even for adding a couple of sentences
18 to a paragraph, but it was done.

19 THE COURT: Good.

20 MS. MCLEMORE: Thank you, Your Honor.

21 THE COURT: That's excellent. Any other parties?
22 All right.

23 MR. RESNICK: So thank you, Your Honor. So I have
24 nothing else to add, unless you have any questions --

25 THE COURT: Very good.

1 MR. RESNICK: -- about the DIP?

2 THE COURT: Well, it sounds like there's agreement on
3 that, so the Court will approve the DIP motion on a final
4 basis with all of the changes that have been agreed to by all
5 of the parties. Very good.

6 MR. RESNICK: Excellent. Thank you, Your Honor.

7 So that takes us to the debtors' motion to approve
8 the strategic transaction bidding procedures, which was filed
9 on April 7th, the first day of the case.

10 I'm pleased to report that this motion as well, is
11 going forward uncontested. We've resolved the five objections
12 that were filed, which I'll explain in a moment.

13 By way of brief background, the strategic transaction
14 bidding procedures, they set forth the means of charting the
15 debtors' path forward in these cases. They actually
16 contemplate receiving bids for asset sales for either the
17 entire company, parts of the company, or for bids to sponsor a
18 plan of reorganization, which we're very much open to as well.
19 The procedures thus have maximum flexibility, so we'll see,
20 when we see what the bids are, what the best path forward is
21 for this company.

22 The debtors' marketing effort has begun. It actually
23 began several months before the petition date, and with the
24 assistance of the debtors' proposed advisors, Deutsche Bank
25 and Perella Weinberg.

1 The dates set forth in the procedures are that
2 preliminary indications of interest are due on May 22nd.
3 Binding bids are due on June 30th. The auction is scheduled
4 for July 6th. And we propose having the sale hearing
5 scheduled, at the moment, for July 10th at 1 p.m., which I
6 believe is our omnibus hearing.

7 The motion that we filed requests July 11th, but I
8 think it makes more sense if it works with Your Honor's
9 schedule, to schedule it for the omnibus hearing date on July
10 10th.

11 THE COURT: I agree, totally.

12 MR. RESNICK: Thank you. The procedures reserve the
13 right of the debtors to select one or more stalking-horse
14 bidders -- I say one or more, because it might be for
15 particular assets as opposed to the entire company -- and to
16 give a breakup fee of up to three percent, and expense
17 reimbursement.

18 If the committee -- if the committee does not support
19 entry into a stalking-horse agreement or the DIP lenders do
20 not support it, and the bid or bids would not be sufficient to
21 pay off the DIP, then we would come back to court for approval
22 of the stalking-horse bid protections.

23 The procedures provide the DIP agent and the
24 committee with extensive consultation rights, and we expect
25 that they will be a material part of the process and have

1 already been and will continue to be.

2 And finally, the motion seeks approval of procedures
3 for the assumption and assignment of executory contracts and
4 unexpired leases in the event of a sale.

5 Your Honor, as I mentioned at the outset, the debtors
6 received five objections to the motion filed by four lessors,
7 and one filed by two of the debtors' surety bond providers.
8 We were able to resolve these objections by making certain
9 changes to the proposed order, including certain
10 clarifications regarding the assumption and assignment process
11 and other changes for certain sureties.

12 Furthermore, in connection with the resolution of the
13 sureties' objection to the bid procedures, we agreed to
14 confirm on the record that the debtors intend to consult with
15 various parties as appropriate, upon review of the bids that
16 are received and in connection with the selecting of any
17 stalking-horse bidder. These parties may include the
18 sureties, whose rights we fully understand, may be affected by
19 certain transactions. To the extent we end up consulting with
20 the sureties, we would intend to do so with respect to the
21 bids, including the supporting information regarding
22 permitting and financial assurances.

23 And we have also made a number of changes to the
24 proposed order and the procedures in response to comments we
25 received from the committee and the DIP agent in the past few

1 weeks.

2 At this point, I'm happy to answer any questions Your
3 Honor may have, otherwise I'd request that the order be
4 entered.

5 THE COURT: Does any party wish to be heard with the
6 debtors' motion for entry of an order approving the strategic
7 transaction bidding procedures and scheduling the bid
8 deadlines in this case?

9 It's a remarkable sound, so obviously you've done a
10 good job.

11 MR. RESNICK: I'll take the silence.

12 THE COURT: So the Court will approve that motion as
13 well.

14 MR. RESNICK: Thank you, Your Honor.

15 Next up, Your Honor, we have a number of procedural
16 type motions. First is the debtors' motion to approve
17 contract and lease rejection and abandonment procedures. The
18 debtors would intend to utilize these procedures to facilitate
19 the rejection of the contracts and leases that are not
20 benefiting the estates and cannot profitably be assumed and
21 assigned to a third party. Utilizing these procedures will
22 streamline things and allow for a reduction in administrative
23 costs, while preserving the rights of counterparties and
24 lessors to receive sufficient notice and to have an
25 opportunity to object and be heard at a hearing.

1 We did not receive any formal objections to the
2 motion. However, we received two informal objections from
3 lessors, which we were able to promptly resolve with various
4 reservations of rights in the order.

5 Unless Your Honor has any questions, we'd request
6 that this order be entered.

7 THE COURT: Does any party wish to be heard with the
8 debtors' motion for approval of the procedures for rejection
9 of executory contracts and unexpired leases?

10 All right, there being no objection, that'll be
11 approved as well.

12 MR. RESNICK: Thank you, Your Honor.

13 Next up is the motion to approve procedures to retain
14 ordinary course professionals without the submission of
15 separate retention applications. This motion will apply to
16 professionals whose employment relates to the debtors' ongoing
17 business and only indirectly, if at all, to the debtors'
18 restructuring efforts. And thus, the debtors submit that
19 approval under 327 by separate application is not necessary.

20 We've not received any objections to this motion.
21 Unless Your Honor has any questions, we'd request that it be
22 entered.

23 THE COURT: That will be approved.

24 MR. RESNICK: Thank you, Your Honor.

25 The last of the procedural motions is the debtors'

1 motion to establish procedures for interim compensation and
2 reimbursement of expenses of retained professionals. The
3 debtors believe that establishing orderly procedures for the
4 payment of retained professionals will streamline the
5 administration of these case and otherwise promote efficiency
6 for the Court, the U.S. Trustee, and all other parties-in-
7 interest. We have not received any objections to this motion.
8 And unless Your Honor has any questions, I'd request that this
9 order be entered.

10 THE COURT: That order will be entered as well.

11 MR. RESNICK: Thank you, Your Honor.

12 Last on the agenda is the -- are the debtors'
13 retention applications. The debtors are seeking to retain
14 Davis Polk as counsel; Hunton & Williams as local counsel;
15 Perella Weinberg Partners as restructuring financial advisor;
16 Deutsche Bank as investment banker and M&A advisor; and KPMG
17 as independent auditor.

18 Prior to filing these, we worked with Mr. Van Arsdale
19 to address any concerns he had on the applications. We have
20 incorporated his comments and we have not received any
21 objections. And unless Your Honor has any questions?

22 THE COURT: Does any party wish to be heard in
23 connection with the debtors' applications for authority to
24 employ professionals in this case?

25 All right, there are no objections to that. Those

1 orders will be entered as well.

2 MR. RESNICK: I apologize, Your Honor. Just to
3 correct the record. Ms. McGreal points out that I mentioned
4 that the auction was on July 6th, but it's actually on July
5 8th. So just for the record. I think the procedures have it
6 right. I probably just misremembered.

7 THE COURT: All right. I wrote down July 6th. So
8 it's July 8 is the correct date?

9 MR. RESNICK: Correct, Your Honor.

10 THE COURT: All right. Very good. Thank you for
11 that clarification.

12 MR. RESNICK: Thank you, Your Honor. I have nothing
13 further.

14 THE COURT: All right. Does any other party-in-
15 interest wish to be heard in connection with any matter in
16 connection with the bankruptcy case?

17 All right. This is going remarkably well this early
18 in the case. I applaud your efforts. I hope that you have a
19 successful auction. And I look forward to seeing you back
20 here.

21 MR. RESNICK: Thank you very much, Your Honor.

22 THE COURT: Thank you all.

23 THE COURT OFFICER: All rise. Court is now
24 adjourned.

25 (Whereupon these proceedings were concluded at 1:25 PM)

1 I N D E X

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|----|---|------|------|
| 2 | | | |
| 3 | RULINGS: | PAGE | LINE |
| 4 | Debtors' wages motion granted on a final | 5 | 1 |
| 5 | basis | | |
| 6 | Debtors' shippers and warehousemen motion | 5 | 1 |
| 7 | granted on a final basis | | |
| 8 | Debtors' surety bond program motion granted | 6 | 24 |
| 9 | on a final basis | | |
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| 18 | Debtors' ordinary course professionals motion | 17 | 23 |
| 19 | is granted | | |
| 20 | Debtors' interim compensation motion is | 18 | 10 |
| 21 | granted | | |
| 22 | Debtors' applications to retain: Davis Polk; | 18 | 25 |
| 23 | Hunton & Williams; Perella Weinberg; Deutsche | | |
| 24 | Bank; KPMG, are granted | | |
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C E R T I F I C A T I O N

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Penina Wolicki

May 8, 2014

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